

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

JOHN CERASUOLO CO., INC.	:	Civil No. 08cv5334 (LAP)(DCF)
	:	
Plaintiff	:	<b>AFFIDAVIT IN SUPPORT</b>
	:	<b>OF MOTION FOR</b>
v.	:	<b>TEMPORARY RESTRAINING</b>
	:	<b>ORDER AND ORDER TO SHOW</b>
PIO ENTERPRISES, INC.	:	<b>CAUSE WHY A PRELIMINARY</b>
ANGELO INGRASSIA, JOE FARACI and	:	<b>INJUNCTION SHOULD NOT</b>
PHILIP L. PUCCIA	:	<b>BE ISSUED AND PRELIMINARY</b>
	:	<b>INJUNCTION</b>
Defendants	:	

Kenneth J. Cavallaro, Sr., being duly sworn, deposes and says:

1. I am the treasurer of John Cerasuolo Co., Inc. ("Cerasuolo"), and make this Affidavit in support of an application for emergency relief pursuant to Rule 65 of the Federal Rules of Civil Procedure.

2. I am personally familiar with all matters which are the subject of this proceeding and the facts set forth in this affidavit are within my personal knowledge. If called upon as a witness, I would and could competently testify to all facts stated in this affidavit.

3. Cerasuolo is a corporation located in Chelsea, Massachusetts, which sells wholesale quantities of perishable agricultural commodities (hereafter "produce"). Cerasuolo is a produce dealer subject to and licensed under the Perishable Agricultural Commodities Act of 1930, as amended, 7 U.S.C. §499a *et. seq.* (hereafter "PACA").

4. a. Pio Enterprises, Inc. ("Pio Enterprises") is a produce dealer as defined by 7 U.S.C. §499a and operates subject to and is licensed under the PACA.

b. Upon information and belief, Angelo Ingrassia, Joe Faraci and Philip L. Puccia were responsible for the day-to-day operations of Pio Enterprises during the time in question and were in positions of control over the PACA trust assets belonging to plaintiff.

5. The sales and accounts receivable records of Cerasuolo including invoices and account statements are made in the ordinary course of business and are made at or near the time of the occurrence of the event of which they are a record. These business records are made by me or under my direction and supervision by employees whose duty it is to prepare such documents.

6. My responsibilities include monitoring the sale of perishable agricultural commodities, including those sales that are the subject of this dispute. My responsibilities also include supervising collection of the accounts receivable for such sales, including Pio Enterprises's account which is the subject of the present application. I have custody and control of the sales and accounts receivable records of Cerasuolo as they relate to Pio Enterprises and I am thoroughly familiar with the manner in which those records are compiled.

7. Between December 31, 2007 and April 4, 2008, Cerasuolo sold and delivered to defendants, in interstate commerce, various wholesale lots of produce worth \$50,094.00 which remains unpaid. (Copies of the outstanding invoices are attached hereto as Exhibit A.)

8. Defendants accepted the produce received from Cerasuolo.

9. Cerasuolo preserved its interest in the PACA trust in the amount of \$50,094.00 by timely delivering invoices to defendants, which contained the language required under Section 5(c)(4) of the Perishable Agricultural Commodities Act ("PACA"), 7 U.S.C. §499e(c)(4). (See Exhibit A.)

10. Defendants are obligated to hold in trust all produce-related assets received from the sale of produce in order to pay \$50,094.00 to Cerasuolo.

11. Defendants have never disputed the amount of the debt owed to plaintiff.

12. For the last two weeks I and other employees of Cerasuolo have repeatedly attempted to contact defendants by telephone to discuss payment. However, each time we call, the phone is not answered. We have also tried to call the principals of Pio Enterprises on their cell phones, but all the cell phone number we have for the principals have been disconnected. We have learned through other customers in the Bronx market that defendants are no longer operating.

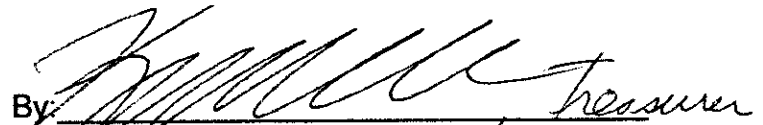
13. Defendants' failure, refusal, inability to pay the amount of \$50,094.00, and the closing of their business without making payment to plaintiff, demonstrates that defendants are failing to maintain sufficient assets in the statutory trust and have dissipated and will continue to dissipate trust assets belonging to plaintiff.

14. Unless the assets of the defendant corporation are frozen, it is likely the trust assets will continue to be dissipated. As a result, Cerasuolo will suffer immediate and irreparable harm because it will lose the trust assets and rights that are owed under the statute.

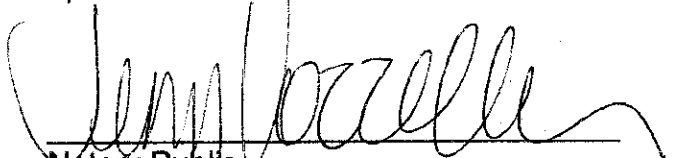
15. No provisional remedy has been secured or sought in this action, and no prior application has been made for the same or similar relief as is sought herein.

I do solemnly declare under the penalties of perjury that the foregoing statements are true and correct to the best of my knowledge, information and belief.

JOHN CERASUOLO CO., INC.

By:  Treasurer  
Kenneth J. Cavallaro, Sr., Treasurer

Subscribed and sworn to before me this 10<sup>th</sup> day of June, 2008.

  
Notary Public

My Commission Expires: Feb 13, 2009

**JOHN CERASUOLO CO., INC.**

COMMISSION FARM PRODUCE

DOMINIC CAVALLARO, JR. - KENNETH J. CAVALLARO

38 NEW ENGLAND PRODUCE CENTER  
TEL. 617-884-3760CHELSEA, MA 02150-1719  
FAX 617-884-8272SOLD TO: P.I.O. Enterprises, Inc.  
# 563 350 Casanova Street

Bronx, NY 10474-6708

DATE: 12/31/07  
INVOICE NO. 103499  
TICKET NO. 3807  
PICKED UP 12/26/07

PROD CODE	QUANTITY	UNIT	PRODUCT DESCRIPTION	PER UNIT	TOTAL CHARGE
8200	42	Case	Cukes	10.00	420.00
10886	80	Case	Squash, Green	14.00	1120.00
11095	160	Case	Tomato, Roma	15.00	2400.00
8231	120	Case	Cuke, European	6.00	720.00
10263	144	Case	Peppers, Suntan	3.00	432.00
10230	60	Case	Peppers, XL Green	10.00	600.00
10260	112	Case	Peppers, Red	12.00	1344.00
10275	120	Case	Peppers, Mixed Red	3.00	360.00
10208	98	Case	Peppers, Jumbo Green	10.00	980.00

TOTAL DUE

8376.00

The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by section 5(c) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 409e(c)). The seller of these commodities retains a trust claim over these commodities, all inventories of food or other products derived from these commodities, and any receivables or proceeds from the sale of these commodities, and any receivables or proceeds from the sale of those commodities until full payment is received.

ALL CLAIMS MUST BE MADE IMMEDIATELY ON RECEIPT OF GOODS, OR THEY WILL NOT BE RECOGNIZED. ALL SHIPMENTS AT BUYER'S RISK - NOT RESPONSIBLE FOR DAMAGE BY

PAGE 02/07

JOHN CERASUOLO CO INC

16178848272

06/06/2008 09:56

Handwritten notes and calculations:

8376.00  
 5771.00  
 4605.00

Handwritten initials: PJ#285, 5/27/08

**JOHN CERASUOLO CO., INC.**

COMMISSION FARM PRODUCE

DOMINIC CAVALLARO, JR. — KENNETH J. CAVALLARO

38 NEW ENGLAND PRODUCE CENTER  
TEL. 617-884-3760CHELSEA, MA 02150-1719  
FAX 617 884 8272SOLD TO: P.I.O. Enterprises, Inc.  
# 563 350 Casanova Street

Bronx, NY 10474-6708

DATE: 01/24/08  
INVOICE NO. 104278  
TICKET NO. 3809

PICKED UP 1/14/08

PROD CODE	QUANTITY	UNIT	PRODUCT DESCRIPTION	PER UNIT	TOTAL CHARGE
8260	59	Case	Cukes, Super Select	20.00	1180.00
10207	296	Case	Peppers, Large Green	9.00	2664.00
10260	175	Case	Peppers, Red	6.00	1050.00
9999	180	Case	Peppers, Red Lg	6.00	1080.00
8613	56	Case	Eggplant, 24 Count	9.00	504.00
10275	300	Case	Peppers, Mixed Red	6.00	1800.00
10208	180	Case	Peppers, Jumbo Green	11.00	1980.00
TOTAL DUE					10258.00

The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by section 5(c) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499c(c)). The seller of these commodities retains a trust claim over these commodities, all inventories of food or other products derived from these commodities, and any receivables or proceeds from the sale of these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received.

ALL CLAIMS MUST BE MADE IMMEDIATELY ON RECEIPT OF GOODS, OR THEY WILL NOT BE RECOGNIZED. ALL SHIPMENTS AT BUYER'S RISK. NOT RESPONSIBLE FOR DAMAGE BY  
 06/06/2008 09:56 16178848272 JOHN CERASUOLO CO INC PAGE 03/07

**JOHN CERASUOLO CO., INC.**

COMMISSION FARM PRODUCE

DOMINIC CAVALLARO, JR. — KENNETH J. CAVALLARO

38 NEW ENGLAND PRODUCE CENTER

CHELSEA, MA 02150-1719

TEL. 617-884-0700

FAX 617-884-8272

SOLD TO:  
# 563P.I.O. Enterprises, Inc.  
350 Casanova Street

Bronx, NY 10474-6708

DATE: 01/28/08

INVOICE NO. 104399

TICKET NO. 2589

PICKED UP 1/21/08

PROD CODE	QUANTITY	UNIT	PRODUCT DESCRIPTION	PER UNIT	TOTAL CHARGE
8240	47	Case	Cukes, Plain	8.00	376.00
8250	47	Case	Cukes, Select	8.00	376.00
8250	42	Case	Cukes, Select	8.00	336.00
8612	48	Case	Eggplant, 18 Count	7.00	336.00
11095	162	Case	Tomato, Roma	8.00	1296.00
8231	144	Case	Cuke, European	3.00	432.00
10886	80	Case	Squash, Green	11.00	880.00
9999	80	Case	Squash, Green Fcy	11.00	880.00
10275	120	Case	Peppers, Mixed Red	5.00	600.00
10208	180	Case	Peppers, Jumbo Green	10.00	1800.00
10230	49	Case	Peppers, XL Green	10.00	490.00
10210	60	Case	Peppers, XXL Green	10.00	600.00
10275	245	Case	Peppers, Mixed Red	5.00	1225.00
10260	60	Case	Peppers, Red	6.00	360.00

TOTAL DUE

9987.00

The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by section 5(c) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499e(c)). The seller of these commodities retains a trust claim over these commodities, all inventories of food or other products derived from these commodities, and any receivables or proceeds from the sale of these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received.

ALL CLAIMS MUST BE MADE IMMEDIATELY ON RECEIPT OF GOODS, OR THEY WILL NOT BE RECOGNIZED. ALL SHIPMENTS AT BUYER'S RISK - NOT RESPONSIBLE FOR DAMAGE BY HEAT OR COLD. TERMS: NET 15 DAYS. INVOICES OUTSTANDING AFTER 30 DAYS ARE SUBJECT TO A FINANCE CHARGE OF 1.5% PER MONTH.

06/06/2008 09:56 16178848272 JOHN CERASUOLO CO INC PAGE 04/07

**JOHN CERASUOLO CO., INC.**

COMMISSION FARM PRODUCE

DOMINIC CAVALLARO, JR. — KENNETH J. CAVALLARO

38 NEW ENGLAND PRODUCE CENTER

CHELSEA, MA 02150-1719

TEL. 617-884-3760

FAX 617-884-8272

SOLD TO: P.I.O. Enterprises, Inc.  
# 563 350 Casanova Street

Bronx, NY 10474-6708

DATE: 02/13/08  
INVOICE NO. 104982  
TICKET NO. 3810  
PICKED UP 1/04/08

PROD CODE	QUANTITY	UNIT	PRODUCT DESCRIPTION	PER UNIT	TOTAL CHARGE
8260	98	Case	Cukes, Super Select	12.00	1176.00
10208	120	Case	Peppers, Jumbo Green	12.00	1440.00
10287	112	Case	Peppers, Yellow	11.00	1232.00
9999	112	Case	Peppers, Ch Red	8.00	896.00
9999	98	Case	Peppers, XL Red	10.00	980.00
9999	91	Case	Peppers, Lg Red	8.00	728.00
10207	60	Case	Peppers, Large Green	11.00	660.00
11120	320	Case	Tomatoes	4.00	1280.00
9999	630	Case	Tomatoes, Vine Ripe	4.00	2520.00

**TOTAL DUE****10912.00**

The perishable agricultural commodities list on this invoice are sold subject to the statutory trust authorized by section 5(c) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499e(c)). The seller of these commodities retains a trust claim over those commodities, all inventories of food or other products derived from these commodities, and any receivables or proceeds from the sale of these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received.

ALL CLAIMS MUST BE MADE IMMEDIATELY ON RECEIPT OF GOODS, OR THEY WILL NOT BE RECOGNIZED. ALL SHIPMENTS AT BUYER'S RISK - NOT RESPONSIBLE FOR DAMAGE BY

PAGE 05/07

JOHN CERASUOLO CO INC

06/06/2008 09:56 16178848272



**JOHN CERASUOLO CO., INC.**

COMMISSION FARM PRODUCE

DOMINIC CAVALLARO, JR. — KENNETH J. CAVALLARO

38 NEW ENGLAND PRODUCE CENTER  
TEL. 617-884-3760CHELSEA, MA 02150-1719  
FAX 617-884-8272SOLD TO: P.I.O. Enterprises, Inc.  
# 363 350 Casanova Street

Bronx, NY 10474-6708

DATE: 03/17/08  
INVOICE NO. 106196  
TICKET NO. 3811

PICKED UP 3/10/08

PROD CODE	QUANTITY	UNIT	PRODUCT DESCRIPTION	PER UNIT	TOTAL CHARGE
11095	320	Case	Tomato, Roma	5.00	1600.00
11165	316	Case	Tomato, 4x5	7.00	2212.00
10260	80	Case	Peppers, Red	15.00	1200.00
8613	49	Case	Eggplant, 2 1/2 Count	10.00	490.00
10886	80	Case	Squash, Green	7.00	560.00
10886	80	Case	Squash, Green	7.00	560.00
11050	160	Case	Tomato, 5x6	10.00	1600.00
11105	160	Case	Tomatoes, Hot House	7.00	1120.00

TOTAL DUE

9342.00

The perishable agricultural commodities list on this invoice are sold subject to the statutory trust authorized by section 5(c) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499e(c)). The seller of these commodities retains a trust claim over these commodities, all inventories of food or other products derived from these commodities, and any receivables or proceeds from the sale of these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received.

ALL CLAIMS MUST BE MADE IMMEDIATELY ON RECEIPT OF GOODS, OR THEY WILL NOT BE RECOGNIZED. ALL SHIPMENTS AT BUYER'S RISK - NOT RESPONSIBLE FOR DAMAGE BY

PAGE 06/07

JOHN CERASUOLO CO INC

16178848272 09:56 06/06/2008

**JOHN CERASUOLO CO., INC.**

COMMISSION FARM PRODUCE

DOMINIC CAVALLARO, JR. — KENNETH J. CAVALLARO

38 NEW ENGLAND PRODUCE CENTER  
TEL. 617-884-3760CHELSEA, MA 02150-1719  
FAX 617-884-8272SOLD TO: P.I.O. Enterprises, Inc.  
# 563 350 Casanova Street

Bronx, NY 10474-6708

DATE: 04/04/08  
INVOICE NO. 106904  
TICKET NO. 21040

PICKED UP 3/17/08

PROD CODE	QUANTITY	UNIT	PRODUCT DESCRIPTION	PER UNIT	TOTAL CHARGE
10275	300	Case	Peppers, Mixed Red	7.50	2250.00
10205	120	Case	Peppers	4.00	480.00
8610	60	Case	Eggplant	7.00	420.00
10886	80	Case	Squash, Green	8.00	640.00
10207	120	Case	Peppers, Large Green	8.00	960.00
10250	60	Case	Peppers, Long Hot	4.00	240.00

TOTAL DUE

4990.00

The perishable agricultural commodities list on this invoice are sold subject to the statutory trust authorized by section 5(c) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499e(c)). The seller of these commodities retains a trust claim over these commodities, all inventories of food or other products derived from these commodities, and any receivables or proceeds from the sale of these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received.

ALL CLAIMS MUST BE MADE IMMEDIATELY ON RECEIPT OF GOODS, OR THEY WILL NOT BE RECOGNIZED. ALL SHIPMENTS AT BUYER'S RISK. NOT RESPONSIBLE FOR DAMAGE TO  
 06/06/2008 09:56 16178848272 JOHN CERASUOLO CO INC PAGE 07/07